

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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IN THE MATTER OF:

THE JOINT APPLICATION OF ORCHARD GRASS UTILITIES, INC.
AND OLDHAM COUNTY SEWER DISTRICT FOR
APPROVAL OF THE TRANSFER OF WASTE WATER
TREATMENT FACILITIES PURSUANT TO STOCK PURCHASE
AGREEMENT BETWEEN THE PARTIES

Case No. 2004-00029

POST HEARING BRIEF OF ORCHARD GRASS UTILITIES, INC.

Comes Orchard Grass Utilities, Inc. ("Orchard Grass"), by counsel and for its Post Hearing Brief, states as follows.

The provisions of KRS 278.020(4) govern the sale of the stock of Orchard Grass to the Oldham County Sewer District (hereinafter "OCSD"). KRS 278.040(4) states:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

Pursuant to this statute, Orchard Grass must obtain the approval of the Commission in order for the sale of its stock to OCSD to proceed. The statute further provides that approval shall be granted if OCSD has the "financial, technical and managerial abilities to provide reasonable service". See KRS 278.020(4).

I. OCSD HAS THE FINANCIAL ABILITY TO PROVIDE REASONABLE SERVICE.

The Joint Application for Approval of Transfer ("Joint Application"), filed by Orchard Grass and OCSD and the testimony and documents introduced during the formal hearing in this matter provided the Commission with information establishing that OCSD has the financial ability to provide reasonable service in operating the Orchard Grass Wastewater Treatment

System (“WWTS”)and the Willow Creek WWTS.

The financial statements of OCSD for the fiscal year ending June 30, 2003, were attached as Exhibit F to the Joint Application. Page 6 of Exhibit F reflects that OCSD has total assets of a value of \$6,917,403 and total liabilities of \$4,114,724. Therefore, its assets substantially exceed its liabilities. Additionally, as of February 11, 2004, OCSD’s new rates of \$7.67, plus \$3.20 per 1000 gallons of water used took effect. (See OCSD’s Answer to Madison’s Initial Data Requests, Nos. E and F). OCSD’s budget estimates using this new rate reflects that it will have net revenue in the approximate amount of \$91,000.00, excluding revenue from Orchard Grass and Willow Creek, as of December 31, 2004. (See OCSD Supplemental Response to PSC Staff Data Request, Paragraph No. 2). The net revenue for 2004 increases to \$141,000, when the projected revenue from the Orchard Grass and Willow Creek WWTS’s are included. Therefore, the documentary evidence establishes that the OCSD has the financial capability to operate the subject plants.

The testimony introduced at the formal hearing also establishes that the OCSD has the financial wherewithal to operate the subject systems. The undisputed testimony of John Bennett, OCSD’s Chief Engineer, was that OCSD is currently operating in the black. Mr. Bennett further testified that OCSD’s budget calculations were made without considering the revenue to be generated by the operation of the Orchard Grass WWTS and the Willow Creek WWTS. The record is devoid of any evidence that OCSD does not have the financial ability to provide reasonable service in operating the subject waste water treatment systems.

II. OCSD HAS THE TECHNICAL ABILITY TO PROVIDE REASONABLE SERVICE.

The Joint Application and the testimony and documents introduced during the formal

hearing in this matter also provided the Commission with information establishing that OCSD has the technical ability to provide reasonable service in operating the Orchard Grass WWTS and the Willow Creek WWTS. OCSD presently owns and operates, either directly or through arrangements with MSD, the following wastewater treatment facilities in Oldham County: Covered Bridge, Country Village, Lakewood Valley, Heather Hills, Mockingbird Valley; Cardinal Harbour, Trails End, Lockwood Estates, Green Valley, and Buckner. (Joint Application Para. No.5). The Commission certainly examined and recognized the OCSD's technical ability to operate these plants prior to approving its purchase of these wastewater treatment facilities. OCSD will rely upon this same technical ability in operating the subject wastewater treatment facilities.

Additionally, John Bennett, a licensed Professional Engineer, has been the Chief Engineer of OCSD's operations since 1999. Mr. Bennett has over 15 years experience in the wastewater treatment industry, and he will supervise the operation of the Orchard Grass WWTS and facilities, as well as the Willow Creek WWTS and facilities. (See Exhibit H to the Joint Application). The OCSD also has two full time employees under the supervision of Mr. Bennett to ensure the proper operation of its wastewater facilities. The OCSD can also rely upon the technical abilities of John B. Maleug, P.E., a member of its Board. Mr. Maleug has over 20 years experience in water resource planning, and his experience includes wastewater treatment and collection systems operation. (See OCSD Exhibit 1, Resume of Mr. Maleug). Furthermore, OCSD also receives planning and management consultant assistance from the Louisville and Jefferson Metropolitan Sewer District. It cannot be disputed that OCSD has the technical ability to operate the subject wastewater treatment plants.

III. OCSD HAS THE MANAGERIAL ABILITY TO PROVIDE REASONABLE SERVICE.

The information in the Joint Application and the testimony and documents introduced during the formal hearing in this matter also establish that OCSD has the managerial ability to operate the Orchard Grass WWTS and the Willow Creek WWTS.

Again, Mr. Bennett, the Chief Engineer of the OCSD, has extensive experience in the management, design and construction of wastewater treatment plants. Furthermore, the OCSD has previously been managing the operation of a system serving approximately 3,711 residential and commercial customers. (See Joint Application, Para. No. 2). The approval of the Joint Application will add approximately 1035 customers, and the OCSD can rely upon its previously gained managerial experience to serve them. Furthermore, OCSD's Board is made up of the following individuals who have the following qualifications. The President of the Board, Forrest B. Ewen, is an architect licensed in Kentucky. Board member Tom E. Davis is an accountant with 23 years of experience in corporate financial operations and control. Indeed, he has extensive financial management experience with a multi-national company. (See OCSD Exhibit No. 2, Resume of Mr. Davis). The Secretary, John B. Malueg, PE, is a Professional Engineer with training in civil, environmental and water biology, and is a Kentucky Wastewater Class III certified operator. As indicated above, he has extensive experience in wastewater treatment and collection system operations. There is simply no evidence in the record indicating in any way that the OCSD does not have the managerial ability to operate the subject wastewater treatment facilities.

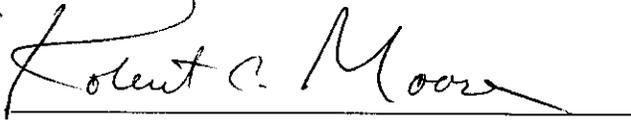
IV. THE OCSD'S PURCHASE OF THE SUBJECT WASTEWATER TREATMENT SYSTEMS IS MADE IN ACCORDANCE WITH LAW, FOR A PROPER PURPOSE AND IS CONSISTENT WITH THE PUBLIC INTEREST.

The OCSD's purchase of the Orchard Grass WWTS and the Willow Creek WWTS is in accordance with law. As set forth in detail above, the OCSD has the requisite financial, technical and managerial capability to provide reasonable service in operating the subject wastewater treatment plants as required by KRS 278.020(4). The fact that 125 of the over 300 customers of Willow Creek are located in Jefferson County, Kentucky does not render this transaction improper. The majority of Willow Creek's customers and the Willow Creek plant site are located in Oldham County. The Willow Creek operations have historically been regulated by either Oldham County officials or officials from the Kentucky Division of Water. Pursuant to KRS 220.280, the OCSD is authorized to make contracts or other arrangements to provide for the collection, disposal and treatment of sewage and other liquid wastes produced outside of Oldham County. The mere fact that the City of Louisville and Jefferson County have merged to form a new form of government does not render improper the OCSD's service of these 125 residents.

The OCSD's purchase of the subject wastewater treatment plants is clearly for a proper purpose and consistent with the public interest. OCSD is purchasing these plants in order to regionalize wastewater treatment in Oldham County and to eliminate point source discharges. The elimination of the point source discharges from these plants will help improve water quality in Oldham County streams. (See OCSD's Response to Madison's Data Request No. 16). This plan is encouraged by the Kentucky Division of Water and is consistent with its intent to accelerate the ultimate elimination of small, privately-owned collection and treatment works. (See Exhibit A to Cogan Pre-filed Testimony). There can be no doubt that the OCSD's purchase of the Orchard Grass WWTS and the Willow Creek WWTS is in accordance with law, is for a proper purpose and consistent with the public interest.

CONCLUSION

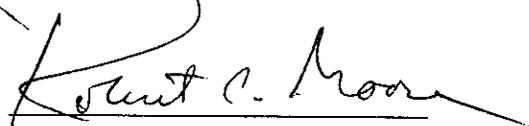
For the above stated reasons, the Joint Applicant, Orchard Grass Utilities, Inc., respectfully requests the Commission to approve its Joint Application and authorize the transfer of the Orchard Grass stock and wastewater treatment facilities to the OCSD.

Respectfully submitted,


Robert C. Moore
HAZELRIGG & COX, LLP
P.O. Box 676
415 West Main Street
Frankfort, Kentucky 40602
Attorney for Orchard Grass Utilities Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Edward Schoenbaechler, Hall, Render, Killian, Heath & Lyman, P.S.C., 2501 Nelson Miller Parkway, Louisville, Kentucky 40223, Robert L. Madison, 5407 Baywood Drive, Louisville, Ky., 40241-1318, and David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Ky., 40601-8204 on this the 26th day of April, 2004.


Robert C. Moore